Study J-1407 February 24, 2021

First Supplement to Memorandum 2021-9

**Statutes Made Obsolete by Trial Court Restructuring (Part 8): Judicial Benefits (Comments from Superior Courts in Los Angeles and San Bernardino Counties)**

The Commission has received the following comments on Memorandum 2021-9:[1]

*Exhibit p.*
- Sherri R. Carter, Superior Court of Los Angeles County (2/22/21) ..... 1
- Krystal Lyons, Superior Court of San Bernardino County (2/23/21) .... 3

Comments like these are crucial in the Commission's study process. They are much appreciated at any time, but especially under the difficult circumstances facing the courts during the pandemic.

After releasing Memorandum 2021-9, the staff found an internal memorandum that former staff attorney Lynne Urman wrote for the Commission in 2001. Among other things, the memorandum discusses how to interpret statutes like Government Code Sections 69894.3 and 69894.4, which apply to a county with a population of a certain size, but do not specify how to determine county population. The pertinent part of the memorandum is attached as Exhibit pages 5-9.

These new materials are described briefly below. Unless otherwise specified, all further statutory references are to the Government Code.

1. Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring* (Nov. 2001) (hereafter, the "2001 tentative recommendation"), *available at* http://www.clrc.ca.gov/pub/Misc-Report/TR-TrialCtRestruct.pdf.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

## OVERVIEW OF THE COMMENTS

The two courts take different positions on the issues discussed in Memorandum 2021-9.

On behalf of Los Angeles County Superior Court ("LASC"), Sherri Carter (Executive Officer and Clerk of Court) writes:

> Retaining connection to county benefit programs for judges and staff remains an important and efficient strategy for many courts. The bargaining power and scale of county governments dwarf those of the local court and *many courts maintain local county agreements as a cost-effective way to provide benefits*. *When they do so, they continue to rely upon much of the statutory framework outlined in the Memorandum*.[2]

Consistent with that general perspective, LASC would oppose the repeal of the four statutes discussed in Memorandum 2021-9: Sections 53200.3, 53214.5, 69894.3, and 69894.4.[3] The remainder of Ms. Carter's letter explains in greater detail why LASC continues to consider each of those sections necessary.[4]

On behalf of the superior court in San Bernardino County, Krystal Lyons (General Counsel and Director of Legal Services) says:

- The court relies on the Trial Court Financial Policies and Procedures Manual in managing travel expense reimbursements for judges and staff, so the court "does not object" to repealing Section 69894.4.[5]
- The court "would not be negatively impacted" if the Commission determines that the parts of Section 69894.3 relating to employee benefits and employee transfer rights are obsolete.[6]
- In San Bernardino County, court staff are not paid from the county's salary fund, so the court "would not be negatively impacted" if the Commission determines that the parts of Section 53200.3 referring to salaries and benefits paid from a county's salary fund are obsolete.[7]
- The court "would not be negatively impacted" if the Commission determines that the parts of Section 53214.5 that refer to employees are obsolete.[8]

2. Exhibit p. 1 (emphasis added).
3. Exhibit pp. 1-2.
4. See *id.*
5. Exhibit p. 3.
6. *Id.*
7. *Id.*
8. *Id.*

Ms. Lyons does not say that any of the four statutes are harming her court in their present form.

We will discuss the comments from these two courts further at tomorrow's meeting.

## SUMMARY OF THE 2001 INTERNAL MEMORANDUM

The 2001 internal memorandum does not specifically discuss Sections 69894.3 and 69894.4, but it does describe and analyze case law pertaining to a number of other statutes that apply to a county with a population of a certain size, but do not specify how to determine county population. Of particular note, the memorandum says the following about former Section 69890, which used to be in the same article as Sections 69894.3 and 69894.4:

> Section 69890 is part of Article 8, which was added in 1953. Other sections in Article 8 were subsequently amended or later added to refer to a specific census. *Thus, where the legislature wanted a particular statute to apply only to a particular county, it included a reference to a specific census. Therefore, the assumption can be made that the legislature's lack of action in that regard with other sections that do not reference a particular date indicates an intent that these statutes apply to all counties that fall within the population classifications at the time of enactment and thereafter.*[9]

The memorandum thus concludes that "statutes of this nature" — i.e., ones that apply to a county with a population of a certain size, but do not specify how to determine the county population — should "be interpreted to apply to all counties within the classification as determined by the latest federal census …."[10]

Respectfully submitted,

Barbara Gaal
Chief Deputy Director

9. Exhibit p. 5 (emphasis added).
10. Exhibit p. 9.

SHERRI R. CARTER
EXECUTIVE OFFICER / CLERK OF COURT

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LOS ANGELES, CA 90012-3014

**Superior Court of California**
**County of Los Angeles**

*(Sent via electronic mail)*

February 22, 2021

Barbara Gaal, Chief Deputy Director
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Dear Ms. Gaal:

Thank you for the opportunity to clarify the needs of the Superior Court of California, County of Los Angeles (Court), and potentially others, regarding Government Code sections that apply to various forms of reimbursements and benefits within the judicial branch, as outlined in the Commission's Memorandum 2021-09. While much has changed since these statutes were written, and since the Commission last examined them in 2001, many continue to provide necessary authority for Court business operations.

Retaining connection to county benefit programs for judges and staff remains an important and efficient strategy for many courts. The bargaining power and scale of county governments dwarf those of the local court and many courts maintain local county agreements as a cost-effective way to provide benefits. When they do so, they continue to rely upon much of the statutory framework outlined in the Memorandum.

The Court opposes the repeal of GC 69894.4. Existing Judicial Council policy provides insufficient clarity regarding the assignment of automobiles and the Court currently relies upon the authority provided by GC 69894.4 for this purpose.

The Court opposes the repeal of GC 69894.3. The Court currently relies upon the authorities provided by GC 69894.3 in several ways:

- First, as noted in Memorandum 2021-09, this statutory authority remains crucial for purposes of juror management.
- Second, the Court routinely cites GC 69894.3 as necessary authority (complementing the TCEPGA) in transactions involving trial court staff transfers.
- Third, the Court relies on the authority provided by GC 69894.3 in contracting for the Court's participation in County benefit plans, including deferred compensation plans. This participation greatly increases the cost-effectiveness of trial court employee benefits and reflects the Legislature's intent in passing the Lockyer-Isenberg Trial Court Funding Act of

1997 to allow court employees to retain access to local benefits provided to county employees. GC 69894.3 remains a necessary authority for this purpose.

The Court opposes the repeal of GC 53200.3. Please note that we have been told that there may be other courts that have agreements with their local counties through which the county pays for benefits of court personnel other than judges. Therefore, we believe that the authority provided by GC 53200.3 remains necessary for this purpose in those courts.

The Court opposes the repeal of GC 53214.5. We reiterate what Judge Bascue wrote in the letter referred to in Memorandum 2021-09: "Together with section 71628, section 53214.5 establishes the basis for participation of court employees in county deferred compensation plans in Los Angeles County." GC 53214.5 continues to remain a necessary authority for this specific purpose, another part of the Court's benefit plan.

As you can see, rather than being a vestige of the days before the restructuring of trial court funding, these statutes continue to provide necessary support (alongside more recent legislation) for an efficient, flexible and modern system of judicial branch employment.

I hope and trust that these clarifications help the Commission continue its important work.

Sincerely,

Sherri R. Carter

# EMAIL FROM KRYSTAL LYONS, SUPERIOR COURT OF SAN BERNARDINO COUNTY (2/23/21)

**Re: CLRC Study on Trial Court Restructuring and Judicial Benefits**

Thank you for inviting the Superior Court of California, County of San Bernardino ("Court") to submit comments and feedback regarding the statutes that the California Law Review Commission is considering at its upcoming meeting this Thursday, February 25, 2021. Our responses to the inquiries posed are as follows:

**Section 69894.4 Expense Allowances**

As noted in the February 2, 2021 Staff Memorandum, the Court relies on the Trial Court Financial Policies and Procedures Manual in managing travel expense reimbursement for judge and staff. Therefore, the Court does not object to the staff's recommendation that Section 6984.4 be repealed.

**Section 69894.3 Court Personnel in Counties Over 2,000,000**

The Court agrees with the staff's analysis and recommendations concerning Section 69894.3. The Court relies on the sections of the Trial Court Employment Protection and Governance Act ("TCEPGA") cited on page 13 of the Staff Memorandum with respect to employee benefits. Similarly, the Court relies on the provisions of the TCEPGA with respect to employee transfer rights. Therefore, the Court would not be negatively impacted if the Commission determines that those parts of Section 69894.3 are obsolete.

**Section 53200.3 County Group Insurance**

Salaries and benefits for Court staff are <u>not</u> paid using the County's salary fund. Therefore, the Court would not be negatively impacted if the Commission determines that those parts of Section 53200.3 are obsolete.

**Section 53214.5 County Deferred Compensation Plans**

The Court relies on the Section 71628 with respect to employee deferred compensation benefits. Therefore, the Court would not be negatively impacted if the Commission determines that the parts of Section 53214.5 that refer to employees is obsolete.

These types of analyses can sometime be cumbersome and confusing. However, your staff did an amazing job of explaining the issues, organizing the analysis, and attaching relevant documents. They should be commended!

Please do not hesitate to contact me if you need further clarification on any of our responses.

Warm regards,

Krystal

**Krystal N. Lyons, JD, Ed.D.**
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May 21, 2001

To: NS

From: LU

Re: County Designations by Class or Population

This memo addresses the interpretation of statutes that reference counties by population or class, rather than by name (specifically, how to determine which county or counties such statutes apply to).

[First part of memorandum omitted.]

**References to Population Only**

The problematic statutes are those that refer to population size without reference to a specific class, census or date. For example:

> 69890. In each county with a *population of 300,000 and over*, the judges of the superior court may appoint a secretary, who shall hold office at their pleasure and perform such duties as may be required of him by the court or the judges. The salary of the secretary shall be two hundred fifty dollars ($250) a month. The salary shall be audited, allowed, and paid out of the general fund of the county.

Does this section apply only to those counties with a population over 300,000 as of the date enacted or does it apply to all counties that exceed the 300,000 limit at any time in the future? Section 69890 was added in 1953 and never amended. If it applied only to those counties with over 300,000 inhabitants as of the date enacted, then only Los Angeles, San Francisco, Alameda, and San Diego Counties would be authorized to appoint a secretary — despite the fact that Orange County surpassed them all (except Los Angeles County) in later population counts. Section 69890 is part of Article 8, which was added in 1953. Other sections in Article 8 were subsequently amended or later added to refer to a specific census. For example, Section 69896 was amended in 1961 to apply to a county with a population of less than 1,500,000 as ascertained pursuant to the 1960 federal census. Thus, where the legislature wanted a particular statute to apply only to a particular county, it included reference to a specific census. Therefore, the assumption can be made that the legislature's lack of action in that regard with other sections that do not reference a particular date indicates an intent that these statutes apply to all counties that fall within the population classifications at the time of enactment and thereafter.

In *Noel v. Lewis*, 35 Cal. App. 658, 170 P. 857 (1917), the precursor to Section 69890 was challenged as special legislation (it is almost identical to the wording of Section 69890). The court rejected this challenge. A more detailed analysis of this decision can be found in *Chitwood v. Hicks*, 219 Cal. 175, 178, 25 P.2d 406 (1933):

> That case involved an act of the Legislature . . . creating the position of secretary of the superior court *and made it applicable to 'all counties, and cities and counties, having a population of three hundred thousand inhabitants*

> *and over.'* It is apparent that the Legislature in that act did not single out any one county of the state and create in that county the position of secretary of the court without regard to the above provision of the Constitution limiting its powers in that regard. *The act was made applicable to all counties and cities and counties of the state having a certain number of inhabitants or over. If perchance only one county of the state contained the requisite population required by said act, then there was a natural and intrinsic distinction between that county and all other counties of the state . . .*"

Several cases have dealt with former Code of Civil Procedure Section 204. That section provided that jurors were to be selected by the board of supervisors except in counties having a population over a certain number, in which case the judges were to select the jurors. The challenge each time was that the law violated the constitutional ban on local or special laws. In *Martin v. Superior Court*, 194 Cal. 93, 227 P. 762 (1924), the Supreme Court dealt with just such a challenge. Prior to 1923, Section 204 permitted judges to select the jurors in counties of 100,000 inhabitants or over. In 1923, the population limit was reduced to 90,000, thereby including Sacramento County in its coverage. The Court found that the amendment was not a special law, but rather:

> It is a general law having a uniform operation upon a class of persons or things readily and naturally differentiated from another class of persons or things by reason of the necessities peculiar to the subject matter of the legislation.

*Id.* at 100.

The Court explained that a law is general even if it operates only upon a class of individuals, provided it applies equally to all persons within the class. The Court further explained that the discretion to classify is vested in the legislature, however, the classification must not be arbitrary — it must be based on some distinction (natural, intrinsic, or constitutional) which suggests a reason for and justifies the particular legislation. Moreover, the presumption is in favor of the classification and will be upheld unless "palpably arbitrary" and neither founded upon nor supported by reason. *Id.* at 100-01.

The Court found that the amendment reducing the population limit from 100,000 to 90,000 was not "palpably arbitrary." Despite having no reference to any reason for the reduction in the statute and despite the plaintiff's claims that it was amended to apply to Sacramento County, the Court took judicial notice that counties with greater populations have vastly more court business and require more trial jurors than smaller counties and this justified different treatment. *Id.* at 102. The Court, in fact, dismissed the argument that the amendment was made for the express purpose of admitting Sacramento County into the group of larger counties:

> It will suffice to say that it does not appear upon the face of the legislation that this was the purpose of the legislature and while it may, nevertheless, well be argued that that was the legislative purpose and intent, still the fact remains that the power of determining the numerical basis of the classification rested with the legislature and having the power to fix the limit of population at one hundred thousand to which, in the first instance, the legislation applied,

> there can be no doubt it seems to us that the legislature had the power to reasonably reduce the numerical limits of population whenever, in the exercise of a wise discretion, the exigencies of a given situation so required. In other words, "where the discretion so to classify is vested in the legislature, the selection of a limit is a legislative power which will be judicially reviewed only in the plain case of abuse."

*Id.* at 104-05.

I have included the above discussion because I believe it assists with the interpretation of these statutes. Even if such a statute were intended to apply only to a specific county or counties when enacted, it must be applied equally to all counties that fall within the classification.

Section 204 was subsequently amended to reduce the population requirements from 90,000 to 80,000. In *Winchell v. Lorenzen*, 123 Cal. App. 2d 704, 267 P.2d 398 (1954), this revised provision was in dispute. At the time that the Sonoma County Board of Supervisors compiled a jury list for 1951, the county's population (per Section 28020) was under 80,000. When Section 28020 was amended during the 1951 session, the county's population was determined to be 103,405. The court of appeals held that the list prepared by the board of supervisors before Sonoma County was determined to be a county of more than 80,000 was the legal and proper list until it was exhausted or the time had come in 1952 for the selection of a new list. I.e., once a new list was to be prepared, Sonoma County would fall within the 80,000 classification and the list would have to be prepared by the judges. *Id.* at 708-09.

In *Kramer v. Reynolds*, 93 Cal. App. 224, 269 P. 573 (1928), the court discussed the history of former Code of Civil Procedure Section 142. As amended in 1923, that section provided that in counties of the first class (i.e., Los Angeles County), a session of the superior court could be held in a city such as Long Beach. The 1923 version of Section 142 was subsequently held to be unconstitutional in *In Re Brady*, 65 Cal. App. 345, 224 P. 252, wherein the court pointed out that "if the section had been so worded as to apply to all the counties of the state of California, it would not be subject to attack on that ground." *Kramer*, at 225. An amendment in 1925 made Section 142 applicable to all of the counties in the state; i.e., sessions could be held in cities of over 50,000 where the city hall was more than 15 miles from the courthouse. The court upheld the 1925 amendment as valid, stating: "These conditions, in any county of the state, warrant the superior court of such county in holding a session of said court in any city in such county where these conditions are present." *Id.* at 225-26.

In *West v. U.L.C. Corp.*, 232 Cal. App. 2d 85, 42 Cal. Rptr. 603 (1965), a challenge was made to former Code of Civil Procedure Section 259a(6), which authorized the court commissioner of a county having a population of 900,000 or more to engage in certain other designated duties. When that section was added in 1929, only Los Angeles County had over 900,000 inhabitants. As of 1965, however, Los Angeles, San Diego and Alameda Counties all exceeded the 900,000 limit. In discussing the plaintiff's contention that the section violated

the constitution as a special law, the court stated that this "contention can only be upheld if there is no reasonable basis for giving court commissioners of populous counties [FN 3] the increased powers provided by Code Civ. Proc. § 259a." *Id.* at 90. In footnote 3, the court identified Los Angeles, San Diego and Alameda Counties as counties with over 900,000 inhabitants (per Section 28020).

Section 259a was subsequently reviewed by the Supreme Court in *Rooney v. Vermont Investment Corp.* 10 Cal. 3d 351, 515 P.2d 297, 110 Cal. Rptr. 353 (1973). In footnote 7, page 362, the Court stated the following:

> By its terms, section 259a applies only to court commissioners in counties which were legislatively declared to have a population of 900,000 or more on the basis of the 1960 federal census, i.e., Los Angeles, San Diego, and Alameda Counties (see Stats. 1961, ch. 43, p. 950, § 1, p. 983, § 7) rather than in counties declared to have such population in Government Code section 28020 based on the 1970 census (see Stats. 1971, ch. 1204, p. 2319, §§ 60-61).

Section 259a did not mention the 1960 federal census or Section 28020 or any other reference point. What the Court was referring to (as discerned from its references to the statutes of 1961 and 1971) was the legislative intent statement to the 1971 amendment to Section 28020, discussed above. Although Los Angeles, San Diego and Alameda Counties were the only counties with over 900,000 inhabitants as of 1960, I question the Court's failure to include Santa Clara and Orange Counties within the reach of Section 259a (both exceeded 900,000 inhabitants as of the 1970 federal census). The legislative intent statement says "Such law shall continue to remain applicable to such county on the basis of the 1960 federal census." It does not say "the applicability" of such law shall be determined by the 1960 census. If a law was not applicable to a county based on the 1960 census, shouldn't the 1970 federal census apply? Regardless, it is clear that the Supreme Court applied Section 259a to counties with populations over 900,000 as of a date subsequent to the statute's enactment.

One final example: Vehicle Code Section 25254 (included in the marshal statutes) authorizes publicly owned vehicles used by marshals in counties with a population of 250,000 or more to display flashing amber lights. Prior to 1974, the section applied only in counties with a population of 4,000,000 or more (i.e., Los Angeles County only). AB 3246 reduced the population threshold to 250,000. Although AB 3246 was introduced at the request of Santa Barbara County, the Assembly Transportation Committee analysis suggests the section would apply to all counties exceeding 250,000 inhabitants:

> AB 3246 was introduced at the request of the Marshal of Santa Barbara County who argues that *small county marshal departments should have the same authorization* to use warning lights on their vehicles as L.A. County.
>
> The California Highway Patrol is opposed to the measure because they feel that the workload and congestion in L.A. County demonstrates the need for warning lights on marshal cars, whereas there has been no demonstrable need for such lights in *smaller counties*.

> The CHP is also not convinced that the marshals must park in a hazardous manner very often in the course of duty in these *smaller counties* and contends that flares could be used on those occasions when a special hazard exists.

If, following the Supreme Court's analysis in *Rooney*, the 1960 federal census figures were used to determine the applicability of revised Section 25254, Santa Barbara would be excluded. In 1960, Santa Barbara had only 168,962 inhabitants. In 1970, however, Santa Barbara had a population of 264,324. Also note that as of 1970, Monterey (one class below Santa Barbara) had a population of 250,071 and another 15 counties had populations in excess of 250,000.

From the above, I suggest that statutes of this nature be interpreted to apply to all counties within the classification as determined by the latest federal census (this ensures that the statutes are sent to all potentially applicable counties). Any county subject to a statute of this kind before 1971 based on the 1960 census should also be sent our revisions to that law. With regard to statutes that reference a certain population amount "or higher," the counties who were subject to the law in 1960 should still be subject to the law today. However, statutes that apply to smaller counties only (e.g., "50,000 or less") may continue to apply to some counties who have exceeded the designated population limit since 1960.